APPENDIX A:
ODDINO II

IN RE MARRIAGE OF ODDINO (1997)
16 CAL.4th 67, ___CAL.RPTR.2d___

[NO. S055819. JUL 28, 1997.]

In re the Marriage of MARY K. and JAMES M. ODDINO. MARY K. ODDINO, Appellant, v. JAMES M. ODDINO, Respondent; HUGHES AIRCRAFT COMPANY NON-BARGAINING RETIREMENT PLAN, Respondent.

[*In re Marriage of Oddino* 16 Cal.4th 67, page 71]

Glasser and Smith and Robert Glasser for Appellant.

No appearance for Respondent James M. Oddino.

O'Melveny & Myers, Stephen J. Pepe, Wayne S. Jacobsen, Todd R. Wulffson and Larry A. Walraven for Respondent Hughes Non-Bargaining Retirement Plan.

Thomas S. Williamson, Jr., J. Davitt McAteer, Marc I. Machiz, Daniel W. Teehan, Paula J. Page, Theresa Gee, Karen L. Handorf, Barbara A. Matthews, Bettina Redway, Paul, Hastings, Janofsky & Walker, Ethan Lipsig, Proskauer, Rose, Goetz & Mendelsohn and Jeffrey A. Berman as Amici Curiae on behalf of Respondent Hughes Non-Bargaining Retirement Plan.

MAJORITY:

WERDEGAR, J.—

Under provisions of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. §1001 et seq.; hereafter ERISA), private retirement plans may, pursuant to a state court's domestic relations order, pay a portion of an employee participant's retirement benefits directly to the employee's former spouse or dependents, if and only if the state court order meets certain specifications. Such an order

is a "qualified domestic relations order" (hereafter a QDRO). (29 U.S.C. §1056(d)(3).)[1]

In this case, we address two questions relating to ERISA and the division of private retirement benefits in a marital dissolution action. First, do the California courts have subject matter jurisdiction to decide whether a superior court's order assigning retirement benefits to the nonemployee spouse is a QDRO? Our answer is yes: state and federal courts have concurrent jurisdiction over that question under section 1132(e)(1). Second, does an order qualify as a QDRO if it requires the retirement plan to pay the nonemployee spouse a portion of the employee spouse's early retirement benefits without any actuarial reduction, where the employee spouse is eligible for such unreduced benefits upon early retirement but has not yet retired? We answer this question no: Such unreduced early retirement benefits include an employer subsidy for early retirement, which, under section 1056(d)(3)(E)(i)(II), may not be paid pursuant to a QDRO if the employee spouse has not separated from service.

[*In re Marriage of Oddino* 16 Cal.4th 67, page 72]

Factual and Procedural Background

The marriage of Mary K. and James M. Oddino was dissolved by the superior court in an interlocutory judgment filed January 19, 1983. During the marriage, James was employed by the Hughes Aircraft Company (Hughes) and participated in the Hughes Aircraft Company Non-Bargaining Retirement Plan (the Plan), which is administered by Hughes. In the interlocutory judgment, Mary was awarded "that portion of [James's] retirement benefits payable, upon date of retirement, pursuant to the formula in Brown." [2] On March 24, 1989, pursuant to a stipulation by James and

---

[1]All further statutory references are to title 29 of the United States Code, unless otherwise specified.

[2]The court's reference was apparently to In re Marriage of Brown (1976) 15 Cal.3d 838 [126 Cal.Rptr. 633, 544 P.2d 561, 94 A.L.R.3d 164]. (See In re Marriage of Judd (1977) 68 Cal.App.3d 515, 522 [137 Cal.Rptr. 318].)

Mary, the court modified its judgment by determining more exactly Mary's share of the retirement benefits (36.6231 percent) and specifying that payments to Mary were to be determined "as if [James] had retired on April 1, 1988," and were to begin "as of" April 1, 1988, or as soon as practical thereafter. April 1, 1988, was James's 55th birthday. At the time of this order, James was still working at Hughes.

On June 1, 1989, the Plan's administrator informed Mary and James the superior court order was a QDRO. The administrator noted, however, that the Plan interpreted the order as not mandating that payments to Mary include "the 'early retirement subsidy.' " In calculating the benefit to be paid Mary, the Plan reduced the monthly annuity amount, which was based on the annuity payable to James on retirement at age 65, by a factor of .4322. This reduction was to account for the fact monthly payments to Mary would begin before James's 65th birthday and would be paid for a longer period. The calculated benefit was, according to the Plan, "equal in actuarial value" to a benefit paid beginning on James's 65th birthday. The actuarial factor reduced Mary's payments, under the 60-month payout option she chose, from $3,618 to $1,564 per month. The Plan began making payments to Mary at the reduced rate in early 1990.

Under the terms of the Plan, an employee who retires at or after age 55, and the sum of whose age and years of service is at least 75, is entitled to a benefit calculated without actuarial reduction, i.e., an annuity in the same periodic amount as if he or she had retired at age 65. This is known as the "Rule of 75." An employee who retires before age 55, or an employee who retires between the ages of 55 and 65 and whose age and years of employment do not total at least 75, is entitled only to an early retirement benefit reduced to the actuarial equivalent of the age 65 benefit. Had James retired on or after April 1, 1988, he would have been entitled to full benefits under the Rule of 75.

[*In re Marriage of Oddino* 16 Cal.4th 67, page 73]

In March 1990, dissatisfied with the actuarially reduced payments, Mary joined the Plan in the marital dissolution action (see Fam. Code, §2060) and sought an order requiring the Plan to pay her benefits calculated under the Rule of 75. The Plan opposed such an order on the ground it would not be a QDRO, and the Plan would therefore be forbidden under ERISA from making any payments to Mary under it.

The superior court denied the relief Mary requested, finding that the Rule of 75 "constitutes a subsidy rather than an accrued benefit," and is therefore "not payable to a spouse prior to the actual retirement of the working spouse." The Court of Appeal reversed and directed the superior court to order the Plan to pay Mary benefits under the Rule of 75. The appellate court held the Rule of 75 was not an employer subsidy, but was instead "the normal retirement benefit when the criteria of 75 years are met." For that reason, the court held, the superior court order would remain a QDRO even if construed to require the payment of unreduced benefits. We granted the Plan's petition for review.

Discussion

I. Subject Matter Jurisdiction

The Plan contends the Court of Appeal was without jurisdiction to decide that the superior court order of March 1989, interpreted as requiring payment of Rule of 75 benefits to Mary before James's retirement, is a QDRO. The Plan's contention is based on its broader claim, endorsed as well by amicus curiae the United States Department of Labor (DOL), that federal courts have exclusive jurisdiction over the question whether a state court domestic relations order is "qualified" under ERISA.

The question of state court subject matter jurisdiction was not raised by the parties in either of the lower courts and was not addressed by the Court of Appeal; the Plan objected on jurisdictional grounds for the first time in its petition for review. As a matter of fundamental jurisdiction affecting the power of the lower courts to act, however, the issue must be addressed. (Consolidated Theatres, Inc. v. Theatrical Stage

Employees Union (1968) 69 Cal.2d 713, 721 [73 Cal.Rptr. 213, 447 P.2d 325].)

We may properly address the question in the general form in which the parties discuss it: Does a state court have jurisdiction to determine that a domestic relations order is "qualified" under ERISA? Although neither the superior court nor the Court of Appeal directly ordered the Plan administrator to consider the March 1989 order a QDRO when construed as mandating

[*In re Marriage of Oddino* 16 Cal.4th 67, page 74]
payment under the Rule of 75, such a result was implicit in the Court of Appeal's direction that the administrator be ordered to pay Mary the Rule of 75 benefits. As the Court of Appeal recognized, the administrator could not, under the applicable provision of ERISA (§1056(d)(3)(A)), legally pay such benefits except pursuant to a QDRO. The Court of Appeal's command that the superior court order Mary to be paid Rule of 75 benefits was thus necessarily premised on the court's holding that such an order would be a QDRO.

The dispute over subject matter jurisdiction centers on a provision of ERISA giving the federal courts exclusive jurisdiction over some ERISA-related actions and giving state courts jurisdiction, concurrent with that of the federal courts, over others. Section 1132(e)(1) states a general rule of exclusive federal jurisdiction for actions brought under ERISA and provides a single possibly applicable exception—"actions under subsection (a)(1)(B) of this section"—as to which state and federal courts have concurrent jurisdiction.[3] Section 1132(a)(1)(B), in turn, authorizes actions by a retirement plan participant or beneficiary "to recover benefits

---

[3]Section 1132(e)(1) provides in full: "Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section."

due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." Subsection (a)(3) of the same section authorizes participants and beneficiaries to bring civil actions to enjoin violations of ERISA or of the plan's terms, to obtain other equitable relief or redress for such violations, or to enforce provisions of ERISA or the plan.[4]

Mary contends her request for relief against the Plan was in the nature of an action to recover benefits due her under the terms of the plan—specifically, benefits calculated pursuant to the plan's Rule of 75—and to clarify her right to such future benefits. It was therefore brought, Mary argues, under section 1132(a)(1)(B), and thus was the subject of concurrent state-federal jurisdiction under section 1132(e)(1). Mary relies on the only published decisions directly addressing this question, both of which arose out of

[*In re Marriage of Oddino* 16 Cal.4th 67, page 75]
the same disputed marital property order and both of which were decided in favor of concurrent state jurisdiction. (*In re Marriage of Levingston* (1993) 12 Cal.App.4th 1303 [16 Cal.Rptr.2d 100] (Levingston I); *Board of Tr. of Laborers Pension Tr. v. Levingston* (N.D.Cal. 1993) 816 F.Supp. 1496 (Levingston II).) On the other hand, the Plan, supported by DOL, maintains Mary is seeking to enforce a provision of ERISA, to wit, the section requiring a plan administrator to determine if an order is a QDRO; her action therefore is

---

[4]Section 1132(a) provides, in pertinent part: "A civil action may be brought—(1) by a participant or beneficiary—[¶] (A) for the relief provided for in subsection (c) of this section, or [¶] (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan; [¶] (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title; [¶] (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provisions of this subchapter or the terms of the plan; ..."

brought pursuant to section 1132(a)(3) and is exclusively within the jurisdiction of the federal courts under section 1132(e)(1). The Plan does not cite any case authority directly supporting its position, but argues both Levingston decisions are contrary to the text and intent of ERISA.

Some background on ERISA's QDRO provisions will be helpful to our discussion. As originally enacted in 1974, ERISA was silent on the question whether its preemption (§1144) and anti-alienation (§1056(d)) provisions prevented state courts from assigning portions of an employee spouse's retirement benefits to a nonemployee spouse pursuant to state law on division of marital property or obligations of support. Courts generally held such orders were not preempted and did not violate the anti-alienation provision. (See, e.g., Carpenters Pension Trust, etc. v. Kronschnabel (9th Cir. 1980) 632 F.2d 745, 747-749; In re Marriage of Johnston (1978) 85 Cal.App.3d 900, 910-912 [149 Cal.Rptr. 798]; Evans v. Evans (1993) 111 N.C.App. 792 [434 S.E.2d 856, 859] [citing cases].) In 1984, however, Congress acted to eliminate any uncertainty by spelling out the types of state court domestic relations orders plan administrators may honor. The 1984 ERISA amendments, also known as the Retirement Equity Act (REA), defined QDRO's (§1056(d)(3)(B)(i)) and exempted such orders from the preemption and anti-alienation provisions (§§1144(b)(7), 1056(d)(3)(A)). In addition, Congress gave the status of plan beneficiaries to former spouses and dependents of plan participants who have received, in a QDRO, rights to any of the participant's benefits ("alternate payees" as defined in §1056(K)), thus allowing them to enforce their rights to benefits. (§1056(J).)

Through these and other provisions, Congress sought to protect the rights of nonemployee spouses and dependents by allowing state courts to make equitable divisions of property in a divorce or dissolution and provision for support of dependents. (*Boggs v. Boggs* (1997) -- U.S. -- [117 S.Ct. 1754, 138 L.Ed.2d 45]; *In re Marriage of Baker* (1988) 204

Cal.App.3d 206, 216-217 [251 Cal.Rptr. 126]; H.R.Rep. No. 655, 98th Cong., 2d Sess., p. 25 (1984) [REA's primary goals include providing "adequate safeguards for spouses not employed outside the home"]; Sen.Rep. No. 575, 98th Cong., 2d Sess., p. 1 (1984), reprinted in 1984 U.S. Code Cong. & Admin. News, p. 2547 (hereafter the 1984 Senate Report) [REA will amend ERISA to

[*In re Marriage of Oddino* 16 Cal.4th 67, page 76]
account for "the status of marriage as an economic partnership, and the substantial contribution to that partnership of spouses who work both in and outside the home"].)

Under section 1056(d)(3)(G)(i), the plan administrator makes the initial determination whether a domestic relations order received by the plan is a QDRO. REA contemplates possible judicial review of that determination in "a court of competent jurisdiction" (§1056(d)(3)(H)(i)), but does not specify the procedure for obtaining such review or the court or courts having jurisdiction. Hence, the parties have turned, as we must also, to the original ERISA provision on jurisdiction, section 1132(e)(1). As already explained, under that provision the existence of state jurisdiction depends upon whether an action to require payments, pursuant to a domestic relations order of disputed qualification, is properly considered an action by a beneficiary to recover, enforce rights to, or clarify future benefits under the terms of a plan, within the meaning of section 1132(a)(1)(B).

In Levingston I, the Court of Appeal held a nonemployee spouse seeking an order that a plan pay benefits as set out in a disputed QDRO was pursuing an action under section 1132(a)(1)(B), within the jurisdiction of the superior court that issued the disputed QDRO. In seeking a payout in the form of an annuity for her own life, rather than a joint and survivor benefit based on the life of her former husband and his new wife, the former wife sought "clearly to recover benefits she claims are due her, to enforce her rights and to

clarify her rights to future benefits." (Levingston I, supra, 12 Cal.App.4th at p. 1306.)

In addition to the language of section 1132(a)(1)(B), the Levingston I court relied on the congressional purpose in REA, i.e., to protect the retirement benefit rights of nonemployee spouses and to provide a practical means by which those benefits could be recovered. "There already is a state court action, the marital dissolution action, to which the plan is a party. Thus, a motion in that court is simple, inexpensive and expeditious. We do not believe Congress, having given state courts the power to issue orders determining and dividing marital rights in retirement plans, would require a separate federal court proceeding to decide whether or not the order is a QDRO. This would cause undue hardship, expense and delay to the affected party, and impose an unnecessary workload on already overburdened federal courts." (Levingston I, supra, 12 Cal.App.4th at p. 1306.)

The Plan attacks the decision in Levingston I on two related grounds. First, the Plan argues, the court's assertion the nonemployee spouse is seeking "to recover benefits" ignores the precise language of section 1132(a)(1)(B),

[*In re Marriage of Oddino* 16 Cal.4th 67, page 77]

which refers specifically to an action to recover benefits, enforce rights, or clarify future benefits "under the terms of the plan." (Italics added.) The Plan reasons that because determination of QDRO status depends on interpretation of ERISA's QDRO provisions, a nonemployee spouse seeking such a determination is asking for enforcement of ERISA, rather than the payment of benefits due "under the terms of the plan." Second, the Plan relies on legislative history from the 1974 enactment of ERISA demonstrating, in the Plan's view, that actions under section 1132(a)(1)(B) were not expected to involve the interpretation of ERISA's substantive provisions.

Considering first the linguistic point, we disagree with the Plan's assertion that Mary and other nonemployee

spouses in like circumstances are seeking to enforce ERISA rather than to obtain benefits under the terms of retirement plans. The superior court's interlocutory judgment divided the community property by giving Mary a specified share of the retirement benefits James had earned through his employment at Hughes. Those benefits are, of necessity, benefits due under the terms of the Plan, which is the only source of retirement benefits to James. The Plan, by its terms, authorizes the payment of part of a participant's benefits to an alternate payee pursuant to a QDRO. A state court domestic relations order, moreover, can be a QDRO only if it does not require a plan to pay "increased benefits (determined on the basis of actuarial value)" or "any type or form of benefit" other than those available under the plan. (§1056(d)(3)(D).) Thus Mary may not claim that she is entitled to greater benefits under any part of ERISA, including the QDRO provisions, than were provided to her and James under the terms of the Plan.

Nor can Mary be said to seek benefits through enforcement of ERISA under section 1132(a)(3). The QDRO provisions added to ERISA by REA do not independently provide former spouses or dependents with rights to any retirement benefits. Rather, they constitute only an exception to the general anti-alienation rule of section 1056(d)(1), allowing plan administrators to make payments, under specified circumstances, to alternate payees if ordered to do so by a state court. To the extent former spouses and dependents have rights in a participant's retirement benefits, those rights derive not from ERISA, but from state domestic relations law. Thus, a former spouse like Mary, who seeks enforcement of a state court order giving her a right to a portion of the participant's plan benefits, is not seeking to enforce ERISA, but to obtain benefits she claims are due her under the terms of the plan and the state court order.

The Plan's legislative history argument rests on a congressional conference report from the 1974 enactment of ERISA. (H.R. Conf. Rep. No. 1280,

93d Cong., 2d Sess. (1974), reprinted in 1974 U.S. Code Cong. & Admin. News, p. 5038 (hereafter the 1974 Conference Report).) Discussing the provisions that became sections 1132(a) and 1132(e), the 1974 Conference Report states: "The U.S. district courts are to have exclusive jurisdiction with respect to actions involving breach of fiduciary responsibility as well as exclusive jurisdiction over other actions to enforce or clarify benefit rights provided under title I. However, with respect to suits to enforce benefit rights under the plan or to recover benefits under the plan which do not involve application of the title I provisions, they may be brought not only in U.S. district courts but also in State courts of competent jurisdiction." (1974 Conf. Rep., supra, 1974 U.S. Code Cong. & Admin. News at p. 5107.) The Plan observes that section 1056, the part of ERISA in which REA placed the QDRO provisions, is in title I of ERISA;[5] determining whether an order is a QDRO, therefore, requires a court to apply and interpret the provisions of title I. The 1974 Conference Report, the Plan argues, shows Congress intended to reserve such interpretive authority to the federal courts.

In Levingston II, the federal district court agreed with the Levingston I court that the state courts had jurisdiction to determine the disputed order in that case was a QDRO. The Levingston II court considered the 1974 Conference Report and found it "interesting," but "not dispositive." (Levingston II, supra, 816 F.Supp. at p. 1499.) "First, the Conference Report pre-dates the enactment of the QDRO-related provisions by ten years. See ... Hadden v. Bowen, 851 F.2d 1266, 1268 (10th Cir. 1988) (little weight given to legislative history 'that is not contemporaneous with the language' at issue). Simply because Congress implemented the QDRO

---

[5]Title I of ERISA was codified to subchapter I of chapter 18 of title 29 of the United States Code. (See 29 U.S.C.A. (1985) §1002, Historical Note, References in Text, p. 71.)

provisions by creating an amendment to §1056 does not mean that Congress intended QDRO related issues to be treated in the same manner as other title I provisions for jurisdictional purposes.... [¶] Moreover, the Conference Report does not mesh with the plain language of §1132(a)(1)(B). §1132(e)(1) provides concurrent jurisdiction for all actions under that section, and nothing in §1132(a)(1)(B) limits its scope to actions which do not require the application of title I provisions. By its own terms, §1132(a)(1)(B) broadly covers any action to recover, enforce, or clarify benefits, without regard to which ERISA provisions must be applied during the action." (Levingston II, supra, 816 F.Supp. at pp. 1499-1500.)

We find the analysis in Levingston II persuasive. Despite the 1974 Conference Report, Congress did not in ERISA limit state court jurisdiction to actions in which the provisions of title I of ERISA have no application. Instead, Congress extended concurrent state jurisdiction to any action by a

[*In re Marriage of Oddino* 16 Cal.4th 67, page 79]
participant or beneficiary to obtain or clarify benefits under the terms of a plan. As we have already seen, an action to qualify a domestic relations order and obtain benefits pursuant to it is an action to obtain or clarify benefits claimed under the terms of a plan. While Congress clearly intended that actions to enforce rights created by ERISA's title I would be limited to federal courts, rights to benefits awarded in a QDRO are not derived from ERISA, but from state law and plan terms.

ERISA title I, sections 1001 through 1145, contain most of the law's substantive provisions protecting employee retirement benefits. These include duties of reporting and disclosure placed on plan administrators (§§1021-1031), minimum standards of participation, vesting and funding for plans (§§1051-1086), and the duties of plan fiduciaries (§§1101-1114). Under section 1132(e)(1), jurisdiction to

enforce these provisions or impose liability for their violation is exclusively federal. For example, jurisdiction is exclusively federal in an action against a plan administrator for failure to furnish certain information to a participant as required by section 1024 (Duffy v. Brannen (Vt. 1987) 529 A.2d 643, 649) and in an action against an employer alleging termination for the purpose of interfering with benefits, in violation of section 1140 (Summers v. U.S. Tobacco Co. (1991) 214 Ill.App.3d 878 [158 Ill.Dec. 412, 574 N.E.2d 206, 210-211]).[6] Again, however, Mary does not seek to enforce any such ERISA title I provisions against the Plan; she seeks payment of benefits assertedly due her under the Plan and the superior court's division of marital property. A provision of ERISA, section 1056(d)(3)(A), assertedly permits the Plan to pay her such benefits, but is not itself the source of Mary's rights, if any, to such benefits.

Determination of Mary's right to benefits, it is true, requires interpretation of ERISA's QDRO provisions, because those provisions limit the benefits the Plan may pay Mary under a state court order. In that sense, Mary's right to benefits could be said to depend on three sources: the terms of the Plan, the terms of the superior court order, and the terms of ERISA. But the terms of ERISA come into play only as limits on Mary's rights, not as their source. Mary's claim for benefits, therefore, is not an action to enforce ERISA under section 1132(a)(3).

The Plan further argues exclusive federal jurisdiction is necessary to allow development of a consistent "federal common law of rights and obligations

---

[6] Jurisdiction is also exclusively federal when the action is brought by someone other than a participant or beneficiary, because section 1132(a)(1)(B) refers only to such plaintiffs. That is the holding—irrelevant here—of two decisions cited by DOL as supporting its jurisdictional contention. (Copeland v. Slidel Memorial Hosp. (La. 1995) 657 So.2d 1292, 1301-1302; Funk Mfg. Co. v. Franklin (Kan. 1996) 927 P.2d 944, 947-948.)

under ERISA-regulated plans" (Pilot Life Ins. Co. v. Dedeaux (1987) 481 U.S. 41, 56 [107 S.Ct. 1549, 1558, 95 L.Ed.2d 39]), as Congress intended. We disagree."Congress's choice to vest jurisdiction over one class of ERISA civil actions in both the state and federal courts is in no way inconsistent with its intent to create a comprehensive scheme of federal common law in the area. State as well as federal courts may be expositors of federal law." (Menhorn v. Firestone Tire & Rubber Co. (9th Cir. 1983) 738 F.2d 1496, 1500, fn. 2.) Although Congress may have expected that state courts typically would resolve section 1132(a)(1)(B) actions through application of "general principles of contract law" (738 F.2d at p. 1500, fn. 2), the rule of federal exclusivity cannot be so broad as to exclude all state court participation in the development of ERISA law. Every action brought by a participant or beneficiary under section 1132(a)(1)(B), even if it purports to state causes of action under state law, is deemed to arise under, and to be governed solely by, federal law, i.e., ERISA and its common law outgrowths (Metropolitan Life Ins. Co. v. Taylor (1987) 481 U.S. 58, 62-66 [107 S.Ct. 1542, 1545-1548, 95 L.Ed.2d 55]), yet Congress expressly permitted such actions to be brought in state court.

Finally, whatever inferences may be drawn from the 1974 legislative history, we agree with both Levingston courts that Congress, when it amended ERISA through REA in 1984, did not intend to strip state courts of the power to enforce QDRO's against plan administrators. (See Levingston I, supra, 12 Cal.App.4th at pp. 1306-1307; Levingston II, supra, 816 F.Supp. at p. 1500.) Even before the passage of REA, an action by a beneficiary to obtain benefits awarded in a state domestic relations order was held to come within section 1132(a)(1)(B), giving concurrent jurisdiction to state and federal courts. (Stone v. Stone (9th Cir. 1980) 632 F.2d 740, 742-743; General Dynamics Corp. v. Harris (Tex.Ct.App. 1979) 581 S.W.2d 300, 303-304; In re Marriage of Pilatti (1979) 96 Cal.App.3d 63, 65-68 [157

Cal.Rptr. 594].) REA, of course, confirmed that a state court's division of retirement benefits and assignment of such benefits to a former spouse or dependent was not preempted or precluded by ERISA. It seems highly unlikely Congress, acting to protect the rights of former spouses and dependents as adjudicated in state court, would, at the same time, have deprived them of their existing ability to obtain enforcement of those rights in state court and required them instead to initiate a separate lawsuit in federal court whenever a retirement plan disputed the qualified status of the state court order.

Because federal courts cannot themselves issue or modify domestic relations orders (see, e.g., Hunter v. Ameritech (N.D.Ill. 1991) 779 F.Supp. 419,

[*In re Marriage of Oddino* 16 Cal.4th 67, page 81]
421; Dickerson v. Dickerson (E.D.Tenn. 1992) 803 F.Supp. 127, 134), separate litigation of the QDRO issue in federal court presents the potential for an expensive and time-consuming course of parallel litigation, including possible appeals, in the two court systems. Few of the former spouses and dependents whose interests REA was intended to protect could afford such expense or delay in determination of their income. Indeed, as the principal House sponsor of REA explained, the legislation was intended to clarify the law in the hope of reducing the need for extended litigation, for "no one benefits when a participant's or beneficiary's rights or a plan's obligations are so unclear that costly and protracted litigation is the inevitable result of lack of statutory clarity." (Remarks of Rep. Clay, Debate on H.R. 4280, 98th Cong., 2d Sess. (1984) reprinted in ERISA: Selected Legislative History 1974-1985 (Bur. Nat. Affairs 1986) p. 252 (hereafter BNA Legislative History).) In the absence of explicit direction in the law, we will not presume Congress intended to deprive alternate payees of their remedy in state court.

At oral argument, counsel for DOL suggested that were we to hold Mary's action comes under section 1132(a)(1)(B),

allowing concurrent jurisdiction, we would actually make it harder for other similarly situated alternate payees to obtain disputed benefits. That result would follow, according to DOL, because, under Firestone Tire & Rubber Co. v. Bruch (1989) 489 U.S. 101 [109 S.Ct. 948, 103 L.Ed.2d 80] (Firestone), courts in section 1132(a)(1)(B) actions must apply a deferential standard of review to plan administrators' decisions. Even if relevant to the jurisdictional question, which we doubt, DOL's argument that state courts would have limited authority to review decisions of plan administrators is not well taken. Firestone actually holds that "a denial of benefits challenged under §1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." (Firestone, supra, 489 U.S. at p. 115 [109 S.Ct. at pp. 956-957].) Although the Plan does give Hughes the authority to interpret the Plan's terms, it gives Hughes no discretionary authority to determine whether a state court order is a QDRO as defined in ERISA or as defined in the Plan (which merely incorporates ERISA's definition). The determination that an order is not a QDRO is therefore, under Firestone, reviewed de novo.

For the reasons given, we conclude state courts have subject matter jurisdiction, concurrent with that of the federal courts, over whether a domestic relations order is a QDRO as defined in ERISA, section

[*In re Marriage of Oddino* 16 Cal.4th 67, page 82]
1056(d)(3)(B). The Court of Appeal therefore did not err by deciding that substantive question.[7]

---

[7]DOL urges us to hold that, even if state courts have jurisdiction, the California statutory provisions for joining retirement plans as parties in dissolution actions are invalid because they are preempted by ERISA; any state court action to determine QDRO status, DOL argues, would have to be separate from the marital dissolution action. We do not ordinarily consider questions not raised by the appellate record and put forward only by an amicus curiae (E.L. White, Inc. v. City of Huntington Beach (1978) 21 Cal.3d 497, 510-511 [146

II. Payment of Benefits Under the Rule of 75

Under California law, a nonemployee spouse may be entitled to begin receiving his or her community interest in an employee spouse's retirement benefits prior to the employee spouse's actual retirement. (In re Marriage of Gillmore (1981) 29 Cal.3d 418, 422-429 [174 Cal.Rptr. 493, 629 P.2d 1].)[8] In the 1984 REA amendments to ERISA, Congress recognized that state domestic relations orders might call for such preretirement payments to an alternate payee. REA provides that an order may be a QDRO even if it requires preretirement payment on or after the participant's earliest retirement age and "as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement)." (§1056(d)(3)(E)(i)(II), italics added.)[9]

Cal.Rptr. 614, 579 P.2d 505]), and we see no reason to depart from that policy here. The Plan has never objected to participating in the dissolution action and has refrained from claiming ERISA preemption of California joinder statutes even after DOL put this theory forward in the Court of Appeal. DOL's theory has, as well, been previously rejected by California courts. (In re Marriage of Baker, supra, 204 Cal.App.3d at pp. 218-219; In re Marriage of Campa (1979) 89 Cal.App.3d 113, 120-131 [152 Cal.Rptr. 362].)

[8]In re Marriage of Gillmore did not, however, hold the nonemployee spouse is entitled to receive benefits directly from the retirement plan, rather than from the employee spouse. Family Code section 2610, subdivision (b)(2), prohibits the court dividing community property from ordering preretirement payment of benefits by a plan, unless the plan provides for such benefits or such benefits are provided for in certain California statutes regarding public employee retirement benefits, or in "similar enactments." (See generally, 2 Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 1997) ¶¶ 8:1235 to 8:1236, pp. 8-299.1 to 8.299.2.) In the present case the Plan, by its terms, allows the payment of benefits to a nonparticipant pursuant to a QDRO; the summary plan description provided to participants, moreover, explains that such payment could begin "as early as your attainment of age 55 even if you are still employed and contributing to the Plan." We do not decide whether Mary would be entitled, under Gillmore (and ERISA), to receive from James the unreduced early retirement benefits we will hold the Plan may not pay under ERISA.

[9]More fully, section 1056(d)(3) provides: "(B) For purposes of this paragraph —[¶] (i) the term 'qualified domestic relations order' means a domestic relations

[*In re Marriage of Oddino* 16 Cal.4th 67, page 83]

The parties agree, as did the Court of Appeal, that resolution of this case requires us to interpret the above italicized proviso in section 1056(d)(3)(E)(i)(II). They differ, however, as to its meaning and application. The Plan contends Rule of 75 benefits are an "employer subsidy for early retirement," which may not be paid to an alternate payee before the participant's actual retirement; the "present value of benefits actually accrued," the Plan maintains, was properly calculated by determining the actuarial equivalent of James's normal retirement age (age 65) periodic benefit. Mary maintains, to the contrary, that Rule of 75 benefits are not an "employer subsidy for early retirement" within the meaning of the statute, but are normal retirement benefits accrued under the plan by participants. We conclude the Plan is correct.

First, section 1056(d)(3)(E)(i)(II) limits benefits payable under preretirement QDRO's to "the present value of benefits actually accrued." A participant's "accrued benefit" is defined as an annual benefit commencing at normal retirement age, or as the "actuarial equivalent" of such a benefit. (§§1002(23), 1054(c)(3).) Section 1056(d)(3)(E)(i)(II), therefore, mandates that early retirement benefits paid pursuant to a preretirement QDRO be based on the actuarial value of the participant's normal retirement age benefit; any

---

order— [¶] ... [¶] (II) with respect to which the requirements of subparagraphs (C) and (D) are met ... [¶] ... [¶] (D) A domestic relations order meets the requirements of this subparagraph only if such order— [¶] (i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan .... [¶] ... [¶] (E)(i) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee— [¶] (I) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age, [and] [¶] (II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement) ...."

greater early retirement benefit represents an increase over "the present value of benefits actually accrued." The Plan was therefore not permitted, under ERISA, to pay Mary a portion of James's benefits before James's retirement without reducing those benefits to the actuarial equivalent of James's age-65 benefit. Unreduced benefits provided by the Rule of 75 could not be paid before James's retirement.

The same conclusion follows if one focuses, as have the parties and the Court of Appeal, on the meaning of "employer subsidy" in section 1056(d)(3)(E)(i)(II). ERISA itself does not define "employer subsidy." The term "subsidy," however, is used in a related context elsewhere in the REA amendments: section 1054(g)(2) prohibits amendment of a plan to eliminate an early retirement benefit or "retirement-type subsidy." The 1984 Senate Report, explaining this provision, parenthetically defined a subsidy as "the excess of the value of a benefit over the actuarial equivalent of the normal

[*In re Marriage of Oddino* 16 Cal.4th 67, page 84]
retirement benefit." (1984 Sen. Rep., supra, 1984 U.S. Code Cong. & Admin. News at p. 2574.) Both parties, the Court of Appeal and amicus curiae California Employment Law Council all embrace this definition of subsidy for the present purpose. We agree this is the probable meaning of subsidy in section 1056(d)(3)(E)(i)(II); the "actuarial equivalent" criterion is also suggested by the command of section 1056(d)(3)(D)(ii) that a QDRO not "require the plan to provide increased benefits (determined on the basis of actuarial value)." (Accord, 2 Hogoboom & King, Cal. Practice Guide: Family Law, supra, ¶ 8:1194, p. 8-286.) Whether Rule of 75 benefits are subsidized, therefore, depends on whether their value is greater than the actuarial value of a participant's normal retirement benefit.

"Normal retirement benefit" is defined in ERISA as "the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement

age." (§1002(22).)[10] James's periodic early retirement benefit under the Plan's Rule of 75 would be the same as, but not greater than, his periodic payment if he retired at age 65. Under the quoted definition, consequently, James's normal retirement benefit is simply his normal retirement age benefit, that is, the periodic amount he would receive if he were to retire from Hughes at age 65.

Applying, next, the definition of a subsidy as "the excess of the value of a benefit over the actuarial equivalent of the normal retirement benefit" (1984 Sen. Rep., supra, 1984 U.S. Cong. & Admin. New at p. 2574), one readily sees that the Rule of 75 benefits are a subsidy. Although the periodic payments available under the Rule of 75 are the same as the age-65 benefit, the value of the Rule of 75 benefit is much greater than the actuarial equivalent of the age-65 benefit. Because the unreduced early retirement annuity available under the Rule of 75 would begin sooner and could be expected on the basis of mortality statistics to be paid for a longer time, its value would exceed the actuarial equivalent of the same annuity commencing when James reaches age 65. The excess value is an early retirement subsidy.

The Court of Appeal, applying the same definitions, nonetheless concluded the Rule of 75 benefits were not subsidized. The court's conclusion rested on its belief the "early retirement benefit" referred to in section 1002(22) is the plan's early retirement benefit "actuarially increased for

[*In re Marriage of Oddino* 16 Cal.4th 67, page 85]
deferment to normal retirement age." Mary adopts the same reasoning, asserting that the law requires "an actuarial increase to defer the [early retirement benefit] to the [normal

---

[10]ERISA requires that plans provide an employee's right to the "normal retirement benefit" is "nonforfeitable upon the attainment of normal retirement age." (§1053(a); 26 U.S.C. §411(a).) A nonforfeitable right to benefits is an "unconditional" and "legally enforceable" claim against the plan. (§1002(19).) In other words, an employee must be "100 percent vested in his accrued benefit when he attains the normal or stated retirement age." (1974 Conf. Rep., supra, 1974 U.S. Code Cong. & Admin. News at p. 5050.)

retirement age benefit] form, and payable from age 65." Because section 1002(22) "define[s] the [normal retirement benefit] as the greater of the Plan's [early retirement benefit] and its [normal retirement age benefit]," Mary argues, "the [early retirement benefit] can never be worth more than the [normal retirement benefit]."

The Plan argues persuasively that the Court of Appeal's analysis is circular and would render meaningless Congress's distinction between subsidized and unsubsidized early retirement benefits. If the periodic early retirement benefit used to determine the normal retirement benefit under section 1002(22) were first increased, so that it would have the same actuarial value beginning at age 65 as at early retirement, then, as Mary's own argument reveals, the actuarial value of the Plan's normal retirement benefit would always, by definition, be at least as great as the value of the plan's early retirement benefit. Under that analysis, no early retirement benefit could be considered subsidized. Section 1056(d)(3)(E)(i)(II)'s reference to employer subsidization of early retirement would be rendered meaningless.

We agree with the Plan that Mary and the Court of Appeal misunderstand section 1002(22). The early retirement and normal retirement age benefits referred to there are periodic benefits, without any actuarial adjustment. Section 1022(22) simply ensures that the periodic payments of a participant's normal retirement benefit under a plan will be no smaller than the payments available under the plan's early retirement option, if any. The normal retirement benefit defined in section 1002(22), in other words, does not include the increased value of unreduced early retirement payments. Because unreduced early retirement benefits, such as those available under the Rule of 75, have a value greater than the actuarial equivalent of a plan's normal retirement benefit, they include a subsidy as defined in the 1984 Senate Report.

This understanding of "normal retirement benefit" as used in ERISA is confirmed in a Treasury Department regulation implementing a tax provision of ERISA (26

U.S.C. §411). That regulation defines "normal retirement benefit" as "the periodic benefit under the plan commencing upon early retirement (if any) or at normal retirement age, whichever benefit is greater." (26 C.F.R. §1.411(a)-7(c)(1) (1996), italics added.) An example provided in the Treasury Department regulation, moreover, answers negatively the precise question before us, i.e., whether a plan's "normal retirement benefit" includes the added actuarial value of an unreduced early retirement benefit.

[*In re Marriage of Oddino* 16 Cal.4th 67, page 86]
"Example (1). Plan A provides for a benefit equal to 1% of high 5 years compensation for each year of service and a normal retirement age of 65. The plan also provides for a full unreduced accrued benefit without any actuarial reduction for any employee at age 55 with 30 years of service. Even though the actuarial value of the early retirement benefit could exceed the value of the benefit at the normal retirement age, the normal retirement benefit would not include the greater value of the early retirement benefit because actuarial subsidies are ignored." (26 C.F.R. §1.411(a)-7(c)(6) (1996).)[11]

The above understanding of "normal retirement benefit" is also reflected in the terms of the Plan itself. Section 4.2(c) of the Plan provides that the "monthly Benefit" constituting a participant's "Normal Retirement Benefit" shall not be less than the "largest monthly Benefit" the participant could have received as an early retirement benefit (Plan, §§4.8(a),

---

[11]Mary, like the Court of Appeal, relies on another paragraph of the Treasury regulation as supporting her position. Paragraph (c)(2)(ii) provides that if the early retirement annuity is not payable in the same "form" as the annuity payable on retirement at normal retirement age, the former must be converted to the same "form of annuity benefit" as the latter before determining which of the two is greater and therefore which is the normal retirement benefit. (26 C.F.R. §1.411(a)-7(c)(2)(ii) (1996).) Contrary to the position of Mary and the Court of Appeal, that paragraph does not require any actuarial increase in the early retirement benefit to account for its hypothetical deferral to normal retirement age; a difference in commencement time of annuity payments is not a difference in the form of annuity.

4.8(c)) or vested retirement benefit (id., §4.15). Section 4.8(c) of the Plan describes the unreduced "monthly payment" available under the Rule of 75. As under the general definition in section 1002(22), therefore, the "normal retirement benefit" under the Plan is a periodic payment defined as the largest of several possible periodic amounts. The periodic amount of the normal retirement benefit may be equal to the Rule of 75 periodic payment, but it does not include the additional actuarial value of the longer stream of Rule of 75 payments that commence before normal retirement age. Again, the excess value of that stream of payments over the actuarial value of the normal retirement benefit is a subsidy, which under section 1056(d)(3)(E)(i)(II) may not be included in a QDRO when the participant has not actually retired.

Our reading of section 1056(d)(3)(E)(i)(II) is further supported by legislative history directly concerning that subsection. The 1984 Senate Report explains the subsection as follows: "When payments are made to an alternate payee before the participant retires, the payments are computed by taking into account only benefits actually accrued and not taking into account any employer subsidy for early retirement. The amount to be paid to the alternate payee is to be calculated by using the participant's normal retirement benefit

[*In re Marriage of Oddino* 16 Cal.4th 67, page 87]
accrued as of the date payout begins and by actuarially reducing such benefit based on the interest rate specified in the plan or 5 percent, if the plan does not specify an interest rate."[12] (1984 Sen. Rep., supra, 1984 Code Cong. & Admin. News at p. 2567, italics added; see also BNA Legislative History, supra, at pp. 250-251 [remarks of Rep. Clay, explaining operation of QDRO provisions through examples: where plan provides a "supplement" for retirement between

[12]Section 1.6 of the Plan specifies the interest and mortality rates to be used in making such actuarial reductions.

ages of 55 and 62, former spouse may elect to begin receiving benefits when participant reaches age 55, but may not receive supplement if participant does not retire before age 62].) Under Mary's approach, she could receive periodic payments based on the normal periodic retirement benefit, without any actuarial reduction in amount to account for the earlier commencement and the longer stream of payments, despite the fact James continued to work for Hughes. The legislative history confirms that Congress did not intend a QDRO to increase a plan's obligations in this manner.

Finally, the Plan's understanding of its Rule of 75 benefits as an employer subsidy for early retirement is supported by the common understanding among courts and commentators as to the subsidized character of unreduced early retirement benefits. For example, the United States Supreme Court, in a decision concerning a plan's ERISA obligations upon plan termination, described the plan's early retirement benefits as follows: "At age 55, participants were eligible for early retirement benefits, calculated in the same manner as normal retirement benefits, but reduced by five percent for each year by which a participant's retirement preceded the normal retirement age. [Citations.] *A subsidized or unreduced early retirement benefit, i.e.*, a benefit equal to that payable at age 65, was available to participants who had 30 or more years of service and elected to retire after age 62." (Mead Corp. v. Tilley (1989) 490 U.S. 714, 719 [109 S.Ct. 2156, 2160, 104 L.Ed.2d 796], italics added.) Another federal decision recently described a bank's early retirement benefits as including, for qualifying participants, " 'unreduced early retirement benefits.' These benefits included a *subsidy* from the Bank so that from the date of early retirement a retiree would receive benefit payments equivalent to those he would have received had he postponed retirement until age sixty-five." (Hein v. F.D.I.C. (3d Cir. 1996) 88 F.3d 210, 213, italics added; see also, Larson v. Northrop Corp. (D.C. Cir. 1994) 21 F.3d 1164, 1166, fn. 2 ["An early retirement subsidy 'is the excess of the value of

the early retirement benefit over the actuarial equivalent of the accrued benefit payable at the normal retirement age.' "].)

Commentators have similarly characterized unreduced early retirement benefits as subsidized. A practitioners' guidebook on QDRO's explains the

[*In re Marriage of Oddino* 16 Cal.4th 67, page 88]
term "early retirement subsidy" by noting that early retirement benefits are usually reduced "to reflect the fact that the payments will be paid for many additional years. An early retirement subsidy exists if a participant retires before the normal retirement age and receives a retirement benefit that has not been actuarially reduced." (Meyen & Dundee, Qualified Domestic Relations Order Answer Book (1996) Q1:61, p. 1-45.) A California family law treatise explains that when the participant has not retired, the former spouse's benefit under a QDRO is limited to the actuarial value of normal retirement benefits: "This may be much less than the amount which would have been paid if the employee actually had retired early (because early retirement is often subsidized by the employer)." (2 Hogoboom & King, Cal. Practice Guide: Family Law, supra, ¶ 8:1194, p. 8-286.) We agree with these courts and commentators that unreduced early retirement benefits are an employer subsidy that, under section 1056(d)(3)(E)(i)(II), may not be ordered paid under a QDRO while the participant continues to work for the plan sponsor.

As reflected in the above comments, employers not infrequently subsidize employees' early retirement as an incentive for specified groups of employees to leave the employer's work force voluntarily, so as to reduce its wage burden or "avoid litigation that might result from laying off an employee." (Lockheed Corp. v. Spink (1996) ___ U.S. ___ [116 S.Ct. 1783, 1791, 135 L.Ed.2d 153, 166].) Such subsidized early retirement programs are a "quid pro quo between the plan sponsor and the participant." (Id. at p. __ [116 S.Ct. at p. 1791, 135 L.Ed.2d at p. 165].) Mary,

however, seeks to make Hughes pay the quid without getting the quo. As sponsor of the Plan, Hughes would remain responsible for funding the portion of James's Rule of 75 benefits paid to Mary, while James continued to work and receive salary and other benefits from Hughes. Section 1056(d)(3)(E)(i)(II) appears designed to avoid just such a result.

Nothing we say here, we note, precludes recalculation of Mary's payments if James actually takes early retirement. Upon the participant's retirement with subsidized early retirement benefits, ERISA does not prohibit modification of a previous order "so that the alternate payee also receives a share of the subsidized benefit." (1984 Sen. Rep., supra, p. 21, 1984 U.S. Code Cong. & Admin. News at p. 2567.) The Plan concedes the superior court retains jurisdiction to modify its QDRO, and expressly waives any objection to such a recalculation upon James's early retirement.

Disposition

We conclude the Court of Appeal erred in directing the superior court to order the Plan to pay Mary benefits calculated under the Rule of 75. The judgment of the Court of Appeal is reversed.

[*In re Marriage of Oddino* 16 Cal.4th 67, page 89]

George, C. J., Mosk, J., Kennard, J., Baxter, J., Chin, J., and Brown, J., concurred.[In re Marriage of Oddino 16 Cal.4th 67, page 89a]

APPENDIX B:
ODDINO I

IN RE MARRIAGE OF ODDINO (1996)
48 CAL.APP.4th 965, ___CAL.RPTR.2d___

NO. B068557.

SECOND DIST., DIV. TWO.

JUL 24, 1996.

In re the Marriage of MARY K. and JAMES M. ODDINO. MARY K. ODDINO, Appellant, v. JAMES M. ODDINO, Respondent; HUGHES NON-BARGAINING RETIREMENT PLAN, Claimant and Respondent.

COUNSEL

Glasser and Smith and Robert Glasser for Appellant.

O'Melveny & Myers, Wayne S. Jacobsen and Todd R. Wulffson for Claimant and Respondent.

Paul, Hastings, Janofsky & Walker, Ethan Lipsig, Proskauer Rose Goetz & Mendelsohn, Jeffrey A. Berman, Paula J. Page, Karen L. Handorf, Barbara A. Matthews and Bettina Redway as Amici Curiae on behalf of Claimant and Respondent.

No appearance for Respondent.

OPINION

MAJORITY: BOREN, P. J.—

This appeal arises out of a marital dissolution action. Appellant wife, Mary K. Oddino, appeals following a May 8, 1992, order which, inter alia, denied her order to show cause seeking a different calculation of her community share of the retirement benefits of her husband, James M. Oddino. According to the interpretation of respondent, Hughes Non-Bargaining Retirement Plan (hereinafter, the Hughes Plan),

which administers husband's retirement plan sponsored by Hughes Aircraft Company, wife's proportionate share (i.e., 36.6231 percent) of her husband's retirement benefit should be calculated as if husband were eligible to retire at age 65, rather than at age 55, which was husband's earliest retirement age under the Hughes Plan by virtue of his years of service and the so-called Rule of 75.[1] The terms of the qualified domestic relations order (hereinafter,

[*In re Marriage of Oddino* 48 Cal.App.4th 965, page 969] QDRO),[2] filed on March 24, 1989, which converted wife's benefit under the pension from a lifetime annuity to a benefit payable in 60 monthly installments, provided that payments to wife were to be determined as if husband had retired on April 1, 1988, with payments to commence on April 1, 1988, "or as soon thereafter as practical."[3] The Hughes Plan

---

[1] The Rule of 75 (i.e., section 4.8 (c) of the retirement plan) provides that an employee who has attained age 55, and for whom the sum of his attained age and years of continuous service equals or exceeds 75, is entitled to the same full, unreduced normal retirement benefit as if the employee had separated from service at the age of 65. The administrative committee of the Hughes Plan views the Rule of 75 early retirement as a "subsidy" to participants who retire prior to the normal retirement age of 65.

[2] A QDRO is a state court domestic relations order which qualifies under federal law to allow a private pension plan, pursuant to the Employee Retirement Income Security Act (hereinafter, ERISA; see 29 U.S.C. 1001 et seq.), to be divided so that a nonemployee spouse may be awarded an appropriate share of such a plan, thus rendering ERISA's alienation and assignment prohibitions inapplicable for the benefit of the nonemployee spouse. (See 29 U.S.C. 1056(d)(3).)

[3] Husband was then eligible for early retirement but had not at that time retired, though we have been advised by counsel for the Hughes Plan that husband has since retired on October 1, 1994, with benefits under the Rule of 75. ERISA, of course, permits a nonemployee spouse to share in retirement benefits pursuant to a QDRO, even prior to retirement by the employee spouse. ERISA specifically provides that a domestic relations order is not precluded from constituting a valid QDRO and does not improperly require a retirement plan to provide a benefit not otherwise provided by the terms of the plan "solely because such order requires that payment of benefits be made to an alternate payee [] as if the participant had retired on the date on which such payment is to begin under such order ...." (29 U.S.C. 1056(d)(3)(E)(i)(II).) The operative language, "as if the participant had retired" (ibid.), presumes that the employee spouse has reached

interpreted the QDRO by using the age 65 vested retirement benefit which provided wife with monthly payments of $1,563.70; use of the early retirement benefit of Rule of 75 would have provided her with monthly payments of $3,689.60 calculated commencing from April 1, 1988, plus any cost-of-living adjustments. The Hughes Plan ultimately commenced payment of wife's share of the benefits on March 1, 1990.

We hold that the trial court erred in denying the order to show cause. The Rule of 75 early retirement was not a subsidy, the QDRO thus did not improperly require payment greater than the actuarial equivalent of the permissible retirement benefits, and the Rule of 75 benefit was an accrued benefit to which wife was entitled pursuant to the QDRO and ERISA. We also find that the Hughes Plan must pay interest on delayed benefit payments to wife and on the unpaid balance due, but we need not discuss the calculation of such interest, which should be addressed in the first instance by the trial court.

[*In re Marriage of Oddino* 48 Cal.App.4th 965, page 970]

Discussion

I. Federal and State Law

The crux of the problem in the present case is whether the Rule of 75 early retirement provision constitutes an employer subsidy for early retirement or constitutes an accrued benefit. The significance of this distinction arises because ERISA limits the amount of benefits which may be paid pursuant to a QDRO, where the employee has not actually retired but has attained "the earliest retirement age." (29 U.S.C. 1056 (d)(3)(E)(i)(I).) ERISA limits the benefits amount by "taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement ...." (29 U.S.C.

---

the age of eligibility to receive retirement benefits under the terms of the retirement plan at issue (see Dickerson v. Dickerson (E.D. Tenn. 1992) 803 F.Supp. 127, 133-134), which is the situation in the present case.

$1056(d)(3)(E)(i)(II).) If payment to the nonemployee spouse was not based on the present value of benefits actually accrued, but rather was based on an employer subsidy, the domestic relations order could direct payment of benefits in excess of the employee spouse's benefits, thus precluding the order from constituting a valid QDRO. (29 U.S.C. 1056(d)(3)(D)(ii) [order does not meet definition of QDRO if it requires "plan to provide increased benefits (determined on the basis of actuarial value)"].) Moreover, a domestic relations order cannot be a QDRO if it requires "a plan to provide any type or form of benefit, or an option, not otherwise provided under the plan ...." (29 U.S.C. 1056(d)(3)(D)(i).)

In assessing whether the Rule of 75 early retirement provision in the present case is an employer subsidy or an accrued benefit the parties herein have addressed conflicting pre-QDRO case law; i.e., cases prior to the amendment of ERISA by the Retirement Equity Act of 1984 (hereinafter, REA; see Pub. L. No. 98-397, 98 Stat. 1426 (Aug. 23, 1984), discussed in In re Marriage of Baker (1988) 204 Cal.App.3d 206, 213-220 [251 Cal.Rptr. 126]), which more clearly delineated a spouse's interest in an employee's pension benefits. (See, e.g., American Stores Co. v. Retirement Plan (10th Cir. 1991) 928 F.2d 986 [early retirement plan was a subsidy and not an accrued benefit and thus employer could eliminate early retirement subsidies for all plan participants]; Amato v. Western Union Intern., Inc. (2d Cir. 1985) 773 F.2d 1402, 1413 [holding to the contrary under pre-REA law].) REA resolved the controversy between cases such as American Stores and Amato by providing that early retirement benefits are treated as accrued and may not be reduced or eliminated even if the benefits constitute a retirement-type subsidy. (29 U.S.C. 1054(g)(2).) REA also, however, set forth QDRO procedures and established a distinction between "benefits actually accrued" and an "employer subsidy for early retirement" (29 U.S.C. 1056 (d)(3)(E)(i)(II)), as previously discussed. ERISA had defined

the term "accrued benefit" as meaning in the case of a defined benefit plan, as here, "the

[*In re Marriage of Oddino* 48 Cal.App.4th 965, page 971] individual's accrued benefit determined under the plan ... expressed in the form of an annual benefit commencing at normal retirement age ...." (29 U.S.C. 1002(23).) Nonetheless, REA provided no definitional guidance as to "employer subsidy for early retirement."

We note that the court in Amato v. Western Union Intern., Inc., supra, 773 F.2d 1402, struggled to find a definition of subsidy and concluded that "the term 'subsidized early retirement benefit' is not defined in the I.R.C. [Internal Revenue Code], the Regulations promulgated thereunder, ERISA, the [terms of the] present [pension plan at issue in Amato], or in the contemporaneous legislative history." (Id. at p. 1413.) The Hughes Plan acknowledges the following parenthetical definition from REA legislative history on plan amendments: "benefit subsidy (the excess of the value of a benefit over the actuarial equivalent of the normal retirement benefit)." (1984 U.S. Code Cong. & Admin. News, at p. 2574.) Significantly, ERISA defines "normal retirement benefit" as "the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age." (29 U.S.C. 1002(22).) As here, where the Rule of 75 benefit is defined from the date of early retirement and not from normal retirement age, a retirement plan's early retirement benefit must be actuarially increased for deferment to normal retirement age before comparing it to the actuarial value of the normal retirement age benefit annuity payments. Then the benefits compared are in comparable forms, and the larger of the two benefits becomes the normal retirement benefit. (See I.R.S. Treas. Regs. 26 C.F.R. 1.411(a)-7(c)(2)(ii) (1996).)

Accordingly, a benefit subsidy would thus be defined as the excess of the value of a benefit over the actuarial equivalent of whichever is greater between (1) the early

retirement benefit under the plan, or (2) the benefit under the plan commencing at normal retirement. An early retirement benefit does not necessarily entail a subsidy, rather than an accrued benefit. Contrary to the contention of the Hughes Plan, a subsidy is therefore not simply the excess of the value of an early retirement benefit over the value of the normal retirement benefit payable at normal retirement.

Nor is there any support for the position of the Hughes Plan in traditional California case and statutory law. It is undisputed that a nonemployee spouse is entitled to receive payments from the employee spouse's interest in the employer's retirement fund prior to retirement if the employee is eligible to retire (In re Marriage of Gillmore (1981) 29 Cal.3d 418 [174 Cal.Rptr. 493, 629 P.2d 1]), and that a divorce must not increase the obligations of an employer's retirement plan (29 U.S.C. 1056(d)(3)(D)(ii) & (E)(i)(II); see also former Civ. Code, 4800.8, continued without substantive change in

[*In re Marriage of Oddino* 48 Cal.App.4th 965, page 972]
Fam. Code, 2610, subd. (b)). Indeed, " 'the employer is entitled to certainty concerning its obligations under its retirement program and must not be required to do more than is required by its contract with the employee spouse ....' " (In re Marriage of Nice (1991) 230 Cal.App.3d 444, 450 [281 Cal.Rptr. 415].) We thus turn to the Hughes Plan and the particular terms of the contract with the employee spouse.

II. The Hughes Non-bargaining Retirement Plan

The Hughes Plan asserts on appeal that the Rule of 75 benefit is a subsidy because Hughes subsidizes this early retirement inducement by its contributions to the retirement plan. However, there is no support in the record for the assertion that the Rule of 75 benefit was funded any differently than any other plan benefit; i.e., funded by Hughes's tax deductible contributions during the past years. Nor is there any legal support for the notion that how a benefit is funded determines if it is a subsidy.

Contrary to the claim of the Hughes Plan, pursuant to the terms of the retirement plan, and consistent with the previously discussed REA legislative history, a participant's normal retirement benefit is not necessarily the benefit payable on the normal retirement date at age 65. Section 1.37 of the retirement plan defines the normal retirement benefit as "the Benefit payable under Section 4.2." Section 4.2(c), under the broad heading in Section 4.2 of "Normal Retirement Benefit," also includes provisions for the early and late retirement versions (4.8 and 4.10) of the normal retirement benefit. The terms of the retirement plan thus comply with the ERISA requirement that the normal retirement benefit constitute the greater of the early retirement benefit under the plan or the benefit under the plan commencing at normal retirement age (29 U.S.C. 1002 (22)), since the Hughes Plan makes the monthly benefit under any of its normal retirement benefits no less than the greater of three early payouts available[4] pursuant to Section 4.2(c).

The term "normal retirement" benefit thus does not necessarily refer to the "normal retirement age," and a participant's normal retirement benefit under the Hughes Plan is not always equivalent to the benefit payable at age 65. In the present case, the Rule of 75 is not a subsidy because it is the normal retirement benefit when the criteria of 75 years are met. (Cf. Richardson v. Pension Plan of Bethlehem Steel (9th Cir. 1995) 67 F.3d 1462, 1468-1469

[*In re Marriage of Oddino* 48 Cal.App.4th 965, page 973] [monthly plant shutdown payments due from time of shutdown to commencement of normal retirement age benefit and which continue being paid after retirement age are a retirement-type subsidy].) Accordingly, the Hughes Plan erred in computing wife's benefit as an alternate payee by

---

[4] One payout would be in the form of an early retirement benefit with the Rule of 75 satisfied and paying the accrued benefit, a second payout would be without the Rule of 75 and paying a reduced vested retirement benefit, and a third payout would be the vested retirement benefit itself.

starting with the benefit that would have been payable at age 65 and then reducing the benefit to its actuarial equivalent.

III. Retirement Benefits Valuation Date and Interest

The Hughes Plan does not dispute the holding in In re Marriage of Crook (1992) 2 Cal.App.4th 1606 [3 Cal.Rptr.2d 905], that " 'the appropriate date of valuation of retirement or pension benefits is the date of trial or the date [set for] payment of benefits.' " (Id. at p. 1612.) Similarly, ERISA acknowledges a retirement plan's liability to the alternate payee as if the participant had retired "on the date on which such payment is to begin under [the QDRO]." (29 U.S.C. 1056(d)(3)(E)(i)(II).) In the present case, the QDRO required that payments to wife were "to commence as of April 1, 1988, or as soon thereafter as practical." The Hughes Plan commenced payments to wife on March 1, 1990, based on husband's age at that time, but calculated the payments to her as of the date payments actually commenced. Wife contends that the benefits should have been calculated and paid to her as of April 1, 1988, and that the trial court erred in approving the amount of benefits paid from March 1, 1990.

We acknowledge that the QDRO's projected date for the payment of benefits was April 1, 1988. However, the order apparently envisioned some delay and specifically permitted payment then "or as soon thereafter as practical." Moreover, the order was not issued and served until April 5, 1989. The order did not specify retroactive payments, though it did provide that payments to wife "are to be determined as if [husband] had retired on April 1, 1988." ERISA requires that the plan administrator shall "within a reasonable period after receipt" (29 U.S.C. 1056(d)(3)(G)(i)(II)) of the order determine whether it constitutes a QDRO, and contemplates that an "18-month period" could ensue from the date the first payment would be required under the order until the plan administrator determines the order constitutes a QDRO. (29 U.S.C. 1056(d)(3)(H)(ii) & (v).) Here, there was an intended first payment date which was not a rigid date, and payments began to wife approximately 12 months after the Hughes

Plan received the order. The delay was under the circumstances not unreasonable.

Nonetheless, a retirement plan "shall pay the segregated amounts (including any interest thereon)" (29 U.S.C. 1056(d)(3)(H)(ii)) during the period

[*In re Marriage of Oddino* 48 Cal.App.4th 965, page 974] in which the QDRO status of a domestic relations order is being determined. As indicated by the declaration of a member of the administrative committee of the Hughes Plan, it does not pay such interest. However, it must pay for the failure to be more prompt by paying interest as required by statute. Such a conclusion is also consistent with the observation in In re Marriage of Gillmore, supra, 29 Cal.3d 418, 424, footnote 4: "[B]oth the timing of receipt and the control of an asset are important aspects of its value. 'Postponement, especially late in life, is often the equivalent of complete defeat....' " The payment of interest may compensate for delay or discourage its occurrence. The assertion by the Hughes Plan that it paid the equivalent of interest by using husband's actual age at the date benefit payments commenced is unavailing. Interest, not its purported equivalent, is what is called for by the statute.

IV. Assertion of Preemption

Following our grant of a petition for rehearing in the present case, the Secretary of the United States Department of Labor (hereinafter, the Secretary) filed an amicus curiae brief in support of the Hughes Plan. The Secretary urged for the first time on appeal that the provisions of the California Family Code which permit an employee benefit plan to be joined as a party in a dissolution proceeding (see, e.g., Fam. Code, 2060, subd. (a), 2063, subd. (a), 2065, 2071-2074) are preempted by ERISA. Apart from the lack of merit in such a contention (In re Marriage of Baker, supra, 204, Cal.App.3d at p. 218; In re Marriage of Olivarez (1986) 188 Cal.App.3d 336, 342 [232 Cal.Rptr. 794]; see In re Marriage of Levingston (1993) 12 Cal.App.4th 1303, 1306 [16

Cal.Rptr.2d 100]), the claim is improperly before us. An appellate court will generally consider only issues properly raised by the appealing parties, not completely new contentions urged for the first time by amici curiae, who would otherwise exert unwarranted last-minute control over the issues decided on appeal. (Knetsch v. United States (1960) 364 U.S. 361, 370 [5 L.Ed.2d 128, 134, 81 S.Ct. 132]; Eggert v. Pacific States S. & L. Co. (1943) 57 Cal.App.2d 239, 251 [136 P.2d 822].) Wife's request for sanctions against the Secretary is denied.

Disposition

The order under review (which included the award of attorney fees and costs) is reversed and vacated, with directions to order that the Hughes Plan pay to wife 36.6231 percent of the Rule of 75 early retirement benefit, plus

[*In re Marriage of Oddino* 48 Cal.App.4th 965, page 975] appropriate interest on the delayed and unpaid balances. Wife is entitled to costs on appeal.

Fukuto, J., and Brandlin, J., * * concurred.

---

* Judge of the Municipal Court for the South Bay Judicial District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX C:
STATEMENT OF DECISION AND ORDER ON ORDER TO SHOW CAUSE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARY K. ODDINO, Petitioner, v. JAMES M. ODDINO, Respondent.	CASE NO. NWD 90975 STATEMENT OF DECISION AND ORDER ON ORDER TO SHOW CAUSE DATE; February 28, 1992 TIME: 9:00 a.m. DEPT: NW "J"
HUGHES NON-BARGAINING RETIREMENT PLAN, Claimant	

On February 28, 1992 at 9:00 a.m. Petitioner's Order to Show Cause came on regularly for hearing in Department J of the above-entitled Court, the Honorable David R. Nisall presiding. On consideration of the papers filed by the parties and the oral arguments presented by counsel at the hearing, the Court made the following findings and rulings: {2}

1. The "Stipulation and Order Re Modification of Interlocutory Judgment and Qualified Domestic Relations Order" filed on March 24, 1989 was not signed by the Claimant. The Claimant was joined as a part to this action only after such QDRO and the Interlocutory Judgment were entered.

2. Respondent has not retired.

3. The estimate of benefits payable (Exhibit H to Petitioner's Memorandum of Points and Authorities) was

requested by Respondent, rather than Petitioner. The estimate made certain assumptions and contains a caveat or disclaimer.

4. The method of calculating benefits referred to in this action as the "Rule of 75" constitutes a subsidy rather than an accrued benefit. Accordingly, for the reasons set forth in the Memorandum of Points and Authorities submitted by Claimant, the Rule of 75 subsidy benefit is not payable to a spouse prior to the actual retirement of the working spouse.

5. Claimant's actuarial calculations factoring in present value, and not including the present value of the employer subsidy for early retirement, appear proper under REA and ERISA and not arbitrary nor capricious.

6. Estoppel is not allowed in this action as a matter of law under the Employee Retirement Income Security Act. In the event estoppel were allowed as a matter of law, the elements of {3} estoppel have not been established; the Claimant did not know of Petitioner's plans, nor did it know when Respondent would retire; nor has it been shown that Claimant issued its benefit estimate to induce Petitioner to act.

7. The Claimant did not take an unreasonable amount of time to approve the Qualified Domestic Relations Order and to commence payments under the Qualified Domestic Relations Order. The payments under the Qualified Domestic Relations Order were in an amount sufficient to recompense Petitioner for the period of time prior to commencement of such payments.

8. The Claimant did not unreasonably withhold information from the Petitioner.

Based upon the foregoing, the papers filed by the parties and the oral arguments presented at the hearing, the Court rules as follows regarding the requests for relief before the Court;

A. All of Petitioner's requests for relief against the Claimant are denied.

B. Should Respondent actually retire before age 65, or during the five-year period after Respondent first qualified to retire and while the Petitioner is receiving benefit payments, Petitioner would be entitled to a recomputation of the benefits payable from the Claimant to the Petitioner. Such recomputation may result in no change in amount, and as the result of such {4} recomputation is purely speculative the Court makes no ruling in this regard. The reservation of jurisdiction concerning payments from Claimant shall continue in force.

C. Pursuant to the stipulation of the Petitioner and the Respondent, the Court did not rule on Petitioner's request for relief against Respondent.

D. Each party shall bear its own attorneys' fees and costs.

DATED: March 27, 1992

O'MELVENY & MYERS
WAYNE S. JACOBSEN
TODD R. WULFFSON

By: /s/
Wayne S. Jacobsen
Attorneys for the Hughes Non-Bargaining Retirement Plan

IT IS SO ORDERED

DATED: May 8, 1992

/s/
David R. Nisall
Commissioner, Los Angeles County Superior Court

APPENDIX D:
CALIFORNIA SUPREME COURT DENIAL OF PETITION FOR REHEARING

Second Appellate District, Division Two, No. B068557
S055819

IN THE SUPREME COURT OF CALIFORNIA

In Re the Marriage of MARY K. AND JAMES M. ODDINO

v.

JAMES M. ODDINO, Respondent

Petition for rehearing DENIED.

SUPREME COURT
FILED
OCT 15, 1997
Robert Wandruff Clerk
DEPUTY

/s/ (George)
Chief Justice

APPENDIX E:
QUALIFIED DOMESTIC RELATIONS ORDER

Sidney L. Radus, Law Corporation
Suite 201 Civic Center Law Building
611 Civic Center Drive West
Santa Ana, California 92701
(714) 541-4411

Attorney for Petitioner

FILED
MAR 24 1989
FRANK 3. ZOLIN
/s/ A. Kidder
BY A KIDDER
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re the Marriage of:	) CASE NO. NWD 90975
Petitioner:	) STIPULATION AND
MARY K. ODDINO	) ORDER RE
and	) MODIFICATION OF
Respondent:	) INTERLOCUTORY
JAMES M. ODDINO	) JUDGMENT AND
	) QUALIFIED DOMESTIC
	) RELATIONS ORDER

Petitioner, MARY L. ODDINO (GLASSMAN) and Respondent, JAMES M. ODDINO, stipulate to modify the terms of the Interlocutory Judgment entered January 19, 1983, by adding the following language to Paragraph 3(d) thereof:

a. Petitioner's interest in the Hughes Aircraft Company Bargaining/Non Bargaining Retirement Plan is to be determined by the following formula: a fraction, the numerator of which is the number of days (6,776) Respondent has participated in the Plan to date of separation which was June 22, 1981, and the denominator of which is the total days (9,251) of Respondent's participation in the plan to April 1, 1988, divided by one-half (1/2), then multiplied by the Respondent's accrued benefit as of April 1, 1988, i.e., 36.6231%.

b. The option to be paid to Petitioner is the Period Certain Annuity for a five (5) year period.

c. The payments to Petitioner are to be determined as if Respondent had retired on April 1, 1988 and payments to Petitioner are to commence as of April 1, 1988, or as soon thereafter as practical.

d. The Social Security Number of Petitioner is 388-32-8581.

e. The benefit payable to Petitioner is based on the lief expectancy to Respondent.

f. The Participant Contributions Account plus interest are to be divided as specified in paragraph a., above.

g. Hughes Aircraft Company Bargaining/Non-Bargaining Retirement Plan is ordered to pay directly to Petitioner, whose mailing address is 21781 Montbury Drive, El Toro, California, 92630.

h. If Petitioner should die prior to receiving her total disbursement, the death benefit based on the Participant Contribution Account, if any, shall be payable to Jeffrey A. Glassman, over age 21 years, whose mailing address is 21781 Montbury Drive, El Toro, CA 92630.

i. The intent of this Stipulation is to conform to the interlocutory Judgment with the requirements imposed by the Retirement Equity Act of 1984 relating to Qualified Domestic Relations Orders (QDRO).

DATED: 3/3/89 /s/ (James M. Oddino)
JAMES M. ODDINO,
Respondent

DATED: 1/22/89 /s/ (Mary K. Oddino Glassman)
MARY K. ODDINO
(GLASSMAN), Petitioner

IT IS SO ORDERED
DATED: MAR 24, 1989 /s/ (David R. Nisall)
JUDGE OF THE SUPERIOR
COURT
Ak

Court Commissioner
Los Angeles County

APPENDIX F:
STATUTES

Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Retirement Equity Act of 1984 ("REA"), Public Law 98-397, August 23, 1984

§1002 Definitions

...

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

...

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

...

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

...

(22) The term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to -

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early

retirement benefit under a plan shall be determined without regard to any benefit under the plan which the Secretary of the Treasury finds to be a benefit described in section 1054(b)(1)(G) of this title.

. . .

(23) The term "accrued benefit" means -

(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and, except as provided in section 1054(c)(3) of this title, expressed in the form of an annual benefit commencing at normal retirement age, or

(B) in the case of a plan which is an individual account plan, the balance of the individual's account.

The accrued benefit of an employee shall not be less than the amount determined under section 1054(c)(2)(B) of this title with respect to the employee's accumulated contribution.

---

§1054 Benefit accrual requirements

(a) Satisfaction of requirements by pension plans

Each pension plan shall satisfy the requirements of subsection (b)(3) of this section, and -

(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1) of this section; and

(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2) of this section.

(b) Enumeration of plan requirements

(1) . . .

(C) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement

benefit would be computed under the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(c) Employee's accrued benefits derived from employer and employee contributions

...

(3) For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

---

§1054(g)(2)

(g) Decrease of accrued benefits through amendment of plan

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other

than an amendment described in section 1082(c)(8) or 1441 of this title.

(2) For purposes of paragraph (1), a plan amendment which has the effect of -

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

(3) ...

---

§1056(d)

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued non-forfeitable benefit and is exempt from the tax imposed by section 4975 of title

26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of title 26.

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph -

(i) the term "qualified domestic relations order" means a domestic relations order -

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which -

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies -

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order -

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(E)(i) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee -

(I) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(III) in any form in which such benefits may be paid under

For purposes of subclause (II), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(ii) For purposes of this subparagraph, the term "earliest retirement age" means the earlier of -

(I) the date on which the participant is entitled to a distribution under the plan, or

(II) the later of the date of the participant attains age 50 or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(F) To the extent provided in any qualified domestic relations order -

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 1055 of this title (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(ii) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 1055(f) of this title.

(G)(i) In the case of any domestic relations order received by a plan -

(I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures -

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

(H)(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the "segregated amounts") which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(iii) If within the 18-month period described in clause (v) -

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved, then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in clause (v) shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in -

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H), then the plan's obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such Act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan. Nothing in the preceding sentence shall permit a requirement under section 1301 of this title of the payment of more than 1 premium with respect to a participant for any period.

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply.

(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualified domestic relations order shall not be treated as garnishment for purposes of section 1673(a) of title 15.

(N) In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

---

§1104. Fiduciary duties

-STATUTE-

(a) Prudent man standard of care

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and -

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III of this chapter.

(2) In the case of an eligible individual account plan (as defined in section 1107(d)(3) of this title), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 1107(d)(4) and (5) of this title).

(b) Indicia of ownership of assets outside jurisdiction of district courts

Except as authorized by the Secretary by regulations, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) Control over assets by participant or beneficiary

In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over the assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary) -

(1) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(2) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

(d) Plan terminations

(1) If, in connection with the termination of a pension plan which is a single-employer plan, there is an election to establish or maintain a qualified replacement plan, or to increase benefits, as provided under section 4980(d) of title 26, a fiduciary shall discharge the fiduciary's duties under this subchapter and subchapter III of this chapter in accordance with the following requirements:

(A) In the case of a fiduciary of the terminated plan, any requirement -

(i) under section 4980(d)(2)(B) of title 26 with respect to the transfer of assets from the terminated plan to a qualified replacement plan, and

(ii) under section 4980(d)(2)(B)(ii) or 4980(d)(3) of title 26 with respect to any increase in benefits under the terminated plan.

(B) In the case of a fiduciary of a qualified replacement plan, any requirement -

(i) under section 4980(d)(2)(A) of title 26 with respect to participation in the qualified replacement plan of active participants in the terminated plan,

(ii) under section 4980(d)(2)(B) of title 26 with respect to the receipt of assets from the terminated plan, and

(iii) under section 4980(d)(2)(C) of title 26 with respect to the allocation of assets to participants of the qualified replacement plan.

(2) For purposes of this subsection -

(A) any term used in this subsection which is also used in section 4980(d) of title 26 shall have the same meaning as when used in such section, and

(B) any reference in this subsection to title 26 shall be a reference to title 26 as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990.

---

§1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought -

(1) by a participant or beneficiary -

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or

(ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or

(ii) to enforce any provision of this subchapter;

(6) by the Secretary to collect any civil penalty under subsection (c)(2) or (i) or (l) of this section;

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 1169(a)(2)(A) of this title);

(8) by the Secretary, or by an employer or other person referred to in section 1021(f)(1) of this title, (A) to enjoin any act or practice which violates subsection (f) of section 1021 of this title, or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection; or

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a violation of part 4 of this title (FOOTNOTE 1) or the terms of the plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts.

(FOOTNOTE 1) So in original. Probably should be "subtitle".

...

§1132(e) Jurisdiction

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the

district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

---

§1144. Other laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

§1144(b)(7)

(b) Construction and application

... [¶] (7) Subsection (a) of this section shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title), qualified medical child support orders (within the meaning of section 1169(a)(2)(A) of this title), and the provisions of law referred to in section 1169(a)(2)(B)(ii) of this title to the extent enforced by qualified medical child support orders.

---

28 U.S.C. §1257(a)

Sec. 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of,

or any commission held or authority exercised under, the United States.

Treasury Regulations
26 C.F.R. §1.411(a)-7(a)
Sec. 1.411(a)-7 Definitions and special rules.

(a) Accrued benefit. For purposes of section 411 and the regulations thereunder, the term 'accrued benefit' means -

(1) Defined benefit plan. In the case of a defined benefit plan -

(i) If the plan provides an accrued benefit in the form of an annual benefit commencing at normal retirement age, such accrued benefit, or

(ii) If the plan does not provide an accured benefit in the form described in subdivision (i) of this subparagraph, an annual benefit commencing at normal retirement age which is the actuarial equivalent (determined under section 411(c)(3) and Sec. 1.411(c)-(5) of the accrued benefit determined under the plan. In general, the term 'accrued benefits' refers only to pension or retirement benefits. Consequently, accrued benefits do not include ancillary benefits not directly related to retirement benefits such as payment of medical expenses (or insurance premiums for such expenses), disability benefits not in excess of the qualified disability benefit (see section 411(a)(9) and paragraph (c)(3) of this section), life insurance benefits payable as a lump sum, incidental death benefits, current life insurance protection, or medical benefits described in section 401(h). For purposes of this paragraph a subsidized early retirement benefit which is provided by a plan is not taken into account, except to the extent of determining the normal retirement benefit under the plan (see section 411(a)(9) and paragraph (c) of this section). The accrued benefit includes any optional settlement at normal retirement age under actuarial assumptions no less favorable than those which would be applied if the employee were terminating his

employment at normal retirement age. The accrued benefit does not include any subsidized value in a joint and survivor annuity to the extent that the annual benefit of the joint and survivor annuity does not exceed the annual benefit of a single life annuity.

(2) Defined contribution plan. In the case of a defined contribution plan, the balance of the employee's account held under the plan.

... [¶]

(c) Normal retirement benefit -

(1) In general. For purposes of section 411 and the regulations thereunder, the term 'normal retirement benefit' means the periodic benefit under the plan commencing upon early retirement (if any) or at normal retirement age, whichever benefit is greater.

(2) Periodic benefit. For purposes of subparagraph (1) of this paragraph -

(i) In the case of a plan under which a benefit is payable as an annuity in the same form upon early retirement and at normal retirement age, the greater benefit is determined by comparing the amount of such annuity payments.

(ii) In the case of a plan under which an annuity benefit payable upon early retirement is not in the same form as an annuity benefit payable at normal retirement age, the greater benefit is determined by converting the annuity benefit payable upon early retirement age into the same form of annuity benefit as is payable at normal retirement age and by comparing the amount of the converted early retirement benefit payment with the amount of the normal retirement benefit payment.

(iii) In the case of a plan which is integrated with the Social Security Act or any other Federal or State law, the periodic benefit payable upon and after early retirement age is adjusted for any increases in such benefits occurring on or after early retirement age which are taken into account under the plan. See however, section 401(a)(15) and the regulations thereunder.

(3) Benefits included. For purposes of this paragraph, the normal retirement benefit under a plan shall be determined without regard to ancillary benefits not directly related to retirement benefits such as medical benefits or disability benefits not in excess of the qualified disability benefit; see section 411(a)(7) and paragraph (a)(1) of this section. For this purpose, a qualified disability benefit is a disability benefit which is not in excess of the amount of the benefit which would be payable to the participant if he separated from service at normal retirement age.

(4) Early retirement benefit; social security supplement.

(i) For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any social security supplement.

(ii) For purposes of this subparagraph, a social security supplement is a benefit for plan participants which -

(A) Commences before the age and terminates before the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under title II of the Social Security Act, as amended (see section 202 (a) and (g) of such Act), and

(B) Does not exceed such old-age insurance benefit.

(5) Special limitation. If a defined benefit plan bases its normal retirement benefits on employee compensation, the compensation must reflect the compensation which would have been paid for a full year of participation within the meaning of section 411(b)(3). If an employee works less than a full year of participation, the compensation used to determine benefits under the plan for such year of participation must be multiplied by the ratio of the number of hours for a complete year of participation to the number of hours worked in such year. A plan whose benefit formula is computed on a computation base which cannot decrease is not required to adjust employee compensation in the manner described in the previous sentence. Thus, for example, if a plan provided a benefit based on an employee's compensation for his highest five consecutive years or a

separate benefit for each year of participation based on the employee's compensation for such year the plan would not have to so adjust compensation. However, if a plan provided a benefit based on an employee's compensation for the employee's last five years or the five highest consecutive years out of the last 10 years, the compensation, would have to be so adjusted. For special rules for applying the limitations on proration of a year of participation for benefit accrual, see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(6) Examples. The provisions of this paragraph are illustrated by the following examples:

Example (1). Plan A provides for a benefit equal to 1% of high 5 years compensation for each year of service and a normal retirement age of 65. The plan also provides for a full unreduced accrued benefit without any actuarial reduction for any employee at age 55 with 30 years of service. Even though the actuarial value of the early retirement benefit could exceed the value of the benefit at the normal retirement age, the normal retirement benefit would not include the greater value of the early retirement benefit because actuarial subsidies are ignored.

Example (2). Plan B provides the following benefits: (1) at normal retirement age 65, $300/mo. for life and (2) at early retirement age 60, $400/mo. for life. The normal retirement benefit is $400/mo., the greater of the benefit payable at normal retirement age ($300) or early retirement ($400).

Example (3). Assume the same facts as example (2) except that the early retirement benefit of $400 is reduced to $300 upon attainment of age 65. If each employee's social security benefit at age 65 is not less than $100, the $100 would be considered to be a social security supplement and would therefore be ignored. Consequently, the normal retirement benefit would be $300.

Example (4). Plan C provides a benefit at normal retirement age equal to 1% per year of service, multiplied by the participant's compensation averaged over the 5 years immediately prior to retirement. An early retirement benefit is provided upon attainment of age 60 equal to the benefit accrued to date of early retirement reduced by 4 percent for each year by which the early retirement date precedes the normal retirement age of 65. Employee A was hired at age 30, participated immediately, and retired at age 65. Employee A's annual compensation was $50,000 between ages 55-60 and was reduced to $33,000 after age 60. The following table indicates the amount of annual benefit that would have been provided by the plan formula if the employee retired at or after age 60:

Age:	Final average computated: (1) -	Percent accrued benefit: (2) -	Reduction: (3) -	Annual benefit: (4) -
60	$50,000	30	0.80	$12,000
61	46,600	31	.84	12,135
62	43,200	32	.88	12,165
63	39,800	33	.92	12,083
64	36,400	34	.96	11,881
65	33,000	35	1.00	11,550

Note. - Col. (1) times col. (2) times col. (3) equals col. (4).

The normal retirement benefit is the greater of the benefit payable at normal retirement age or the early retirment benefit. Employee A's normal retirement benefit is $12,165, the greatest annual benefit Employee A would be entitled to.

APPENDIX G:
LEGISLATIVE HISTORY

Senate Report No. ("SR") 98-575, P.L. 98-397:, page 19 (U. S. Code, Congressional and Administrative News, v. 4, 98th Congress, 2nd Session, page 2565)

There is a divergence of opinion among the courts as to whether ERISA preempts State community property laws insofar as they relate to the rights of a married couple to benefits under a pension, etc., plan. [24]

[24] In *Stone v. Stone*, 633 F.2d 740 (9th Cir. 1980), the court held that ERISA was not intended to preempt community property laws and that a court order requiring a division of retirement benefits did not violate the anti-assignment provisions. In *Francis v. United Technology Corp.*, 458 F.Supp. 84 (N.D. Cal. 1978), however, the court held that ERISA's preemption provision prevents the application of State community property law permitting attachment of plan benefits for family support purposes.)

The IRS has ruled that the spendthrift provisions are not violated when a plan trustee complies with a court order requiring the distribution of benefits of a participant in pay status to the participant's spouse or child support obligations.[25] The IRS has not taken any position with respect to this issue in cases in which the participant's benefits are not in pay status.

[25]Rev. Rul. 80-27, 1980-1 C.B. 8.

...

Because rights created, recognized, or assigned by a qualified domestic relations order, and benefit payments pursuant to such an order, are specifically permitted under the bill, **State law providing for these rights and payments under a qualified domestic relations order will continue to be exempt from Federal preemption** under ERISA. Emphasis added, *id.*

House Report ("HR") 98-655, Part I, Retirement Equity Act of 1984, 98th Cong., 2d Sess.

The anti-assignment provision coupled with the preemption clause has created conflict between State interests in enforcing court orders... . The courts are divided on the question of whether the anti-assignment clause applies to State domestic relations orders and also on the question of whether the preemption clause refers to State domestic relations laws and court orders. Emphasis added, HR 98-655, p. 30.

A few courts have interpreted the **assignment and alienation provisions as prohibiting awarding a divorced spouse a share of a plan participant's pension benefits.** Emphasis added, *id.*

...

Presently, former spouses are not able to receive pension payments until payments have actually begun to be made to the participant. Moreover, **the participant may elect to defer receiving payments until the latest possible date.** In addition, because payment of the former spouse's benefit is coterminous with that of the participant, the **former spouse's payments end with the death of the participant.** Emphasis added, *id.*

...

[T]he general policy underlying the bill's provisions is that **the domestic relations court is the appropriate forum to balance the equities between the parties and settle all controversies.** Id., p. 39.

...

[T]he alternate payee can begin collecting at the plan's early retirement age pursuant to a court order ... regardless of whether the participant continues to work past early retirement age. *Id.*, p. 40.

...

The **maximum amount** that can be paid to the alternate payee is based on the present value of the amount the

participant would have received if he or she retired on the date on which the alternate payee started to collect (except in the case of death ...). Emphasis added,*Id.*

...

[T]he Committee's general policy [is] to rely on state court **procedures** in domestic relations matters... . Emphasis added,*Id.*, p. 41.

...

The Committee intends that plan administrators make every effort to assure that alternate payees receive the benefits which have been awarded them by the State domestic relations courts. Id., 42.

...

The bill also amends the preemption provisions (section 514) of ERISA to reflect the limited exception which is being provided to allow the **enforcement** of qualified domestic relations orders (as defined in the bill) against employee pension benefit plans. The inclusion of this specific exception reflects the Committee's judgment that ERISA's preemption rules should be amended to this limited extent in order to resolve the problems which have arisen in the domestic relations area. Emphasis added,*Id.*